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(e) The recipient signs as advance payment agreement.

§ 842.148 When not authorized.

Do not make an advance payment if the claim is payable under the:

- (a) Federal Tort Claims Act.
- (b) International Agreement Claims Act.
- (c) Military Personnel and Civilian Employees' Claims Act. (Separate regulations issued under the Act provide for partial payments.)

§ 842.149 Separate advance payment claims.

Every person suffering injury or property loss may submit a separate request for an advance payment. For example, where the Air Force destroys a house containing a family of four, each family member may submit a separate request for and receive an advance payment of \$100,000 or less.

§ 842.150 Liability for repayment.

The claimant is liable for repayment. Deduct the advance payment from any award or judgment given to a claimant. Reimbursement from the claimant will be sought if the claimant does not file a claim or lawsuit.

PART 845—COUNSEL FEES AND OTHER EXPENSES IN FOREIGN TRIBUNALS

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AUTHORITY: Sec. 8012, 70A Stat. 488, sec. 1037, 72 Stat. 1445; 10 U.S.C. 8012, 1037.

SOURCE: 44 FR 75633, Dec. 21, 1979, unless otherwise noted.

32 CFR Ch. VII (7-1-06 Edition)

NOTE: This part is derived from chapter 2 of Air Force Regulation 110-12, December 1, 1978.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 845.1 Purpose.

This part establishes criteria and assigns responsibility for the provision of counsel, for the provision of bail, and for the payment of court costs and other necessary and reasonable expenses incident to representation in civil and criminal proceedings, including appellate proceedings, before foreign courts and foreign administrative agencies, which involve members of the Armed Forces, civilian personnel and dependents. Payment of fines is not authorized hereunder.

§ 845.2 Statutory authority.

10 U.S.C. 1037 provides authority for employment of counsel, and payment of counsel fees, court costs, bail, and other expenses incident to representation of persons subject to the Uniform Code of Military Justice before foreign tribunals. For personnel not subject to the Uniform Code of Military Justice, funds for similar expenses may be made available in cases of exceptional interest to the service concerned, upon prior application through the Judge Advocate General of the service concerned, to the appropriate service secretary.

§ 845.3 Responsibility.

(a) Requests for provision of counsel, provision of bail, or payment of expenses will ordinarily be made by the defendant or accused through appropriate channels to the officer exercising general court-martial jurisdiction over him. This officer shall determine whether the request meets the criteria prescribed herein and, based upon such determination, shall take final action approving or disapproving the request. Within their geographical areas of responsibility, major commands in the interest of obtaining prompt and effective legal service may appoint as approval authority, instead of the officer exercising general court-martial jurisdiction, any subordinate

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officer having responsibility in a particular country for personnel subject to foreign criminal jurisdiction.

(b) Notwithstanding the criteria prescribed below, an officer exercising approved authority may, in his discretion, deny a request for the provision of counsel, provision of bail or payment of expenses, where the otherwise eligible requestor is in an absent without leave or deserter status at the time of the request, or otherwise is not then subject to United States military control, and there is no reasonable basis for the belief that the requestor will return to United States military control at the conclusion of the proceedings of service of an adjudged sentence, if any.

§ 845.4 Criteria for the provision of counsel and payment of expenses in criminal cases.

Requests for the provision of counsel and payment of expenses in criminal cases may be approved in pretrial, trial, appellate and posttrial proceedings in any one of the following criminal cases:

(a) Where the act complained of occurred in the performance of official duty; or

(b) Where the sentence which is normally imposed includes confinement, whether or not such sentence is suspended; or

(c) Where capital punishment might be imposed; or

(d) Where an appeal is made from any proceeding in which there appears to have been a denial of the substantial rights of the accused; or

(e) Where conviction of the offense alleged could later form the basis for administrative discharge proceedings for misconduct as a result of civil court disposition; or

(f) Where the case, although not within the criteria established in paragraphs (a), (b), (c), (d), or (e) of this section, is considered to have significant impact upon the relations of US forces with the host country or is considered to involve any other particular US interest.

§ 845.5 Provision of bail in criminal cases.

Funds for the posting of bail or bond to secure the release of personnel from

confinement by foreign authorities before, during, or after trial may be furnished in all criminal cases. Safeguards should be imposed to assure that at the conclusion of the proceedings or on the appearance of the defendant in court, the bail or bond will be refunded to the military authorities. Bail will be provided only to guarantee the presence of the defendant and will not be provided to guarantee the payment of fines or civil damages. Local US military authorities are expected to provide bail, in any case, only after other reasonable efforts have been made to secure release of pretrial custody to the US.

§ 845.6 Criteria for the provision of counsel and payment of expenses in civil cases.

Requests for provision of counsel and payment of expenses in civil cases may be granted in trial and appellate proceedings in either of the following civil cases:

(a) Where the act complained of occurred in the performance of official duty; or

(b) Where the case is considered to have a significant impact upon the relations of US forces with the host country or is considered to involve any other particular US interest. No funds shall be provided under this part in cases where the United States of America is in legal effect the defendant, without prior authorization of the Judge Advocate General.

§ 845.7 Procedures for hiring counsel and obligating funds.

(a) The selection of individual trial or appellate counsel will be made by the defendant. Such counsel shall represent the individual defendant and not the US Government. Selection shall be made from approved lists of attorneys who are qualified, competent and experienced in trial practice, and admitted for full practice, on their own account, before the courts of the foreign country involved. Normally, these lists will be coordinated with the local court or bar association, if any, and the appropriate US Diplomatic or Consular Mission and should include only those attorneys who are known or reputed, to comply with local attorney fee schedules or guides approved or suggested by local